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Supreme Court of the United States

OCTOBER TERM, 1937.

NO. [redacted] 31

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, A Corporation,
Petitioner,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN, JOHN O. BOLIN, SARAH B. CAMPBELL, JAMES D. BOLIN, ELAINE SCOTT, PERRY BOLIN AND DEAN BOLIN,
Respondents.

Homer Bolin, Frank Bolin & Keith Bolin

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

RAINEY T. WELLS
Of Omaha, Nebraska
M. E. FORD
Of Maryville, Missouri
JOHN T. HARDING
DAVID A. MURPHY
R. CARTER TUCKER,
JOHN MURPHY,
CHARLES B. TURNEY,
Of Kansas City, Missouri
Attorneys for Petitioner

SPENCER D. BOVARD, LAW PRINTER, 722 WALNUT, K. C. MO.—VI, 4366

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner, The Sovereign Camp of The Woodmen of the World, alleges and respectfully shows to this Honorable Court:

Summary Statement of the Matter Involved.

Petitioner is a fraternal beneficiary association duly created, organized and existing under the laws of the State of Nebraska with a lodge system, a ritualistic form of work and representative form of government. It has no capital stock and transacts its business without profit for the sole and mutual benefit of its members by providing in its constitution and by-laws for the payment of death benefits to the beneficiary designated in benefit certificates issued by it only to its members. The funds from which such benefits are paid by petitioner are derived solely from dues, assessments and monthly payments collected from, and paid by, its members (R. 40, 41, 61-87, 92-95). The full extent of petitioner's power to pay death benefits under benefit certificates issued by it is expressed in Article 3 of its Articles of Incorporation in the following language (R. 93):

> "To create a fund from which, upon reasonable and satisfactory proofs of the death of a member in good standing holding a beneficiary certificate, there shall be paid the proceeds of one assessment upon the *surviving* members, from whom the same can be legally collected a sum not to exceed Three Thousand Dollars ($3,000). * * *" (Italics ours.)

In the year 1895, (R. 41) a by-law was adopted by petitioner (hereinafter referred to as Section 82 of the by-laws of petitioner) which provided as follows (R. 71):

> "Sec. 82. Life Membership Certificates shall be

issued by the Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

"When the certificate of a member who has entered the Order between the ages of 16 and 33 has been in force and binding for 30 years, or of members entering between 34 and 42 years of age when the certificate has attained the age of 25 years, and all members entering the Order over 43 years of age when the certificate has attained the age of 20 years; and that after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper officers of the Sovereign Camp shall issue quarterly, assessment calls upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months, for said Life Members who have died during said time, under this provision and that any Life Member visiting a Camp shall be greeted with the honors of the Order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge, to be designed and prescribed by the Sovereign Camp."

On June 3, 1896, while the above quoted Section 82 of petitioner's by-laws was thought to be lawfully in effect, petitioner issued to one Pleasant Bolin of Arkoe, Nodaway County, Missouri, who was then 47 years of age, its benefit certificate No. 8955 providing for the payment of certain periodical dues by the member, and for the payment by the association of death benefits in the amount of $1,000 and burial expenses in the amount of $100 to the beneficiaries named therein, which certificate, pursuant to the provisions of the aforesaid Section 82 of petitioner's by-laws, contained, in the upper right-hand corner thereof, the words

"payments to cease after 20 years" and in the body thereof, language providing, in substance, that the certificate was liable to forfeiture if the member failed to pay the dues required to be paid under said benefit certificate or to comply with the constitution and by-laws of petitioner then in force, or thereafter to be adopted, to which constitution and by-laws the issuance and acceptance of the certificate was expressly made subject (R. 33-37, 48). Said benefit certificate was substantially identical to many other such certificates issued by petitioner to its members pursuant to the provisions of the aforesaid Section 82 of its by-laws (R. 52).

In the year 1899, said Section 82 (then Section 68, R. 75) of petitioner's by-laws was repealed by the requisite majority of its members (R. 87, 88).

Thereafter, Prince L. Trapp, being the holder of a benefit certificate issued by petitioner containing the "payments to cease after 20 years" clause, instituted in the District Court of Douglas County, Nebraska, a suit "* * * for and on behalf of himself and all others similarly situated * * *" to compel the association to issue to him a paid-up certificate under the provisions of the aforesaid Section 82 of petitioner's by-laws. The petition alleged, in substance, that he became a member of petitioner in reliance upon the "payments to cease" feature of the benefit certificate, and that he paid all dues and assessments assessed by petitioner against him for more than 20 years. Petitioner filed an answer alleging that under its charter the aforesaid Section 82 of its by-laws and the "payments to cease after 20 years" clause contained in the benefit certificate were *ultra vires* and void, to which a reply was filed alleging, among other things, that petitioner was

"* * * forever estopped from denying the validity of its contract * * *." Judgment was rendered in favor of petitioner in the lower court, from which an appeal was taken to the Supreme Court of Nebraska, the highest judicial tribunal in the State of Nebraska, where the judgment in favor of petitioner was affirmed (R. 101-139). *Trapp* v. *Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, 168 N. W. 191. The Court's decision in the *Trapp* case was based entirely upon its previous decision in *Haner* v. *Grand Lodge A. O. U. W. of Nebraska*, 102 Neb. 563, 168 N. W. 189 (R. 137), where it was held that the enactment of a by-law similar, in principle, with the aforesaid Section 82 of petitioner's by-laws by a fraternal beneficiary association created under the identical laws of the State of Nebraska under which petitioner was created was *ultra vires* and void, and that in a suit to compel the association to issue a paid-up certificate, the association was not estopped to assert that the enactment of the by-law was *ultra vires*.

Pleasant Bolin, to whom the benefit certificate involved herein was issued, paid to petitioner all dues and assessments required to keep the certificate in force for a period of more than twenty years (R. 39, 44, 45, 48, 49, 89), after which he ceased to pay any dues or assessments whatever, and as a result of his failure to make such payments, petitioner treated him as automatically suspended from membership and his rights under the aforesaid benefit certificate as forfeited (R. 44, 45, 48, 49, 89).

On July 18, 1933, said Pleasant Bolin died (R. 31) and thereafter there was commenced in the Circuit Court of Nodaway County, Missouri, by the beneficiaries named in the aforesaid benefit certificate (respondents herein), against petitioner, a suit entitled "*William F. Bolin et al* v.

Sovereign Camp of the Woodmen of the World" to recover of petitioner the sum of $1100 as benefits under the aforesaid benefit certificate (R. 7). In said action, petitioner, contending that the enactment of the aforesaid Section 82 of its by-laws, and the inclusion of the "payments to cease after 20 years" clause in the benefit certificate were each *ultra vires* and void, and that the benefit certificate had been forfeited for non-payment of dues, duly pleaded in its answer the provisions of its Articles of Incorporation, the decision and judgment of the Supreme Court of Nebraska in *Trapp* v. *Sovereign Camp of the Woodmen of the World, supra,* and invoked the full faith and credit provision of the Constitution of the United States (R. 11-25). Respondents filed a reply to petitioner's answer, alleging, among other things, that petitioner was estopped to assert that the enactment of said by-law and the inclusion of the "payments to cease after 20 years" clause in the benefit certificate were *ultra vires* of petitioner and invalid (R. 25-27). Upon the trial of said case, judgment was rendered against petitioner in the amount of $1100 (R. 143, 144). After an unsuccessful motion for a new trial (R. 144-147), petitioner duly appealed to the Supreme Court of Missouri (R. 148, 149), where the cause was transferred to the Kansas City Court of Appeals (R. 170-173) *Bolin et al.* v. *Sovereign Camp, W. O. W.*, 338 Mo. 618, 98 S. W. (2d) 681.) The Kansas City Court of Appeals thereafter filed an opinion affirming said judgment (R. 174-192) and upon rehearing held pursuant to a motion therefor filed by petitioner, filed a subsequent opinion also affirming said judgment (R. 192-194, 195, 199-216). Thereafter, petitioner filed a subsequent motion for rehearing (R. 196-199) which was overruled by said Kansas City Court of Appeals and an additional opinion filed (R. 199, 217-219). Thereafter, petitioner filed in the

Supreme Court of Missouri its petition for a writ of certiorari, which was denied (R. 221-228), and petitioner's right of appeal from said judgment in the State of Missouri was thereby exhausted.

In its opinion, said Kansas City Court of Appeals, in affirming said judgment against petitioner, held, in substance, that the benefit certificate in question, having been applied for, issued and accepted in the State of Missouri, and the dues provided for thereunder having been paid in the State of Missouri, the rights of the beneficiaries thereunder are to be determined under the laws of the State of Missouri; that since at the time of the issuance of said benefit certificate there was no law in the State of Missouri under which a fraternal beneficiary association could become licensed to do business in the State of Missouri, petitioner did business at that time in the State of Missouri under its general insurance laws; that since it was neither pleaded nor proven that petitioner had thereafter complied with the laws of the State of Missouri whereunder its certificates previously issued would be exempt from the application of the general insurance laws, the benefit certificate in question was an "old line" contract of insurance under the laws of the State of Missouri; that neither it, nor the trial court were bound, under Article IV, Section 1 of the Constitution of the United States, to accord full faith and credit to petitioner's charter, nor to the aforesaid decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in *Trapp* v. *Sovereign Camp of the Woodmen of the World, supra,* the law of the State of Missouri being controlling, and that under the law of the State of Missouri, the inclusion in the benefit certificate of the "payments to cease after 20 years" clause was not *ultra vires* of petitioner, and that if it were, petitioner would be estopped to assert it (R. 199-216, 217-219).

Reasons Relied On for Allowance of the Writ.

Said opinion of the Kansas City Court of Appeals fails to accord full faith and credit under Article IV, Section 1, of the Constitution of the United States to petitioner's charter, and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal of that state, in *Trapp* v. *Sovereign Camp of the Woodmen of the World, supra,* in which it was held that under petitioner's charter, the enactment of the aforesaid Section 82 of petitioner's by-laws and the inclusion of the "payments to cease after 20 years" clause in a benefit certificate issued by petitioner were *ultra vires* and void, and that petitioner was not estopped to assert the defense of *ultra vires* nor the invalidity of the benefit certificate. Said opinion of the Kansas City Court of Appeals, by failing, as it does, to accord full faith and credit to petitioner's charter and to said decision and judgment of the Supreme Court of Nebraska is violative of the provisions of Article IV, Section 1, of the Constitution of the United States and is in direct conflict with the decisions of this Court in the cases of *Supreme Council of the Royal Arcanum* v. *Green,* 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089; *Modern Woodmen of America* v. *Mixer,* 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783; *Sovereign Camp of the Woodmen of the World* v. *Shelton,* 270 U. S. 628, 46 S. Ct. 207, 70 L. Ed. 769; *Hartford Life Ins. Co.* v. *Ibs,* 237 U. S. 662, 35 S. Ct. 692, 59 L. Ed. 1165, and *Hartford Life Ins. Co.* v. *Barber,* 245 U. S. 146, 38 S. Ct. 54, 62 L. Ed. 208.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Kansas City Court of Appeals of Missouri, commanding that Court to certify to and

send to this Court for its review and determination, on a day certain to be named therein a full and complete transcript of the record and all proceedings in the case entitled on its docket, "*William F. Bolin et al., Respondents,* v. *Sovereign Camp of the Woodmen of the World, Appellant,* No. 18928" and that the judgment of said Kansas City Court of Appeals may be reviewed by this Honorable Court, and that petitioner may have such other and further relief in the premises as to this Honorable Court shall seem proper, and petitioner will ever pray, etc.

The Sovereign Camp of the Woodmen of the World, *Petitioner.*

By:

Raymond H. Wells

Of Omaha, Nebraska

M. E. Ford

Of Maryville, Missouri

John T. Harding

David R. Murphy

R. Carlin Tucker

John Murphy

Charles B. Turney

Of Kansas City, Missouri

Attorneys for Petitioner

Supreme Court of the United States

OCTOBER TERM, 1937.

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THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, A Corporation,
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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINION BELOW.

The opinion of the Kansas City Court of Appeals is not yet officially reported but appears in Volume 112, South-

western Reporter (Second Series), at page 582, and in the record at pages 199 to 216. The additional opinion filed upon rehearing appears in Volume 112, Southwestern Reporter (Second Series), at page 592, and the record at pages 217 to 219.

II.

JURISDICTION.

(a) The jurisdiction of this Court is invoked by petition for writ of certiorari under Section 237 of the Judicial Code, as amended by Act of February 13, 1925 (Title 28, U. S. C. A. Sec. 344b, and on the authority of *Roche* v. *McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365.

(b) The judgment sought to be reversed was rendered by the Circuit Court of Nodaway County, Missouri, on May 1, 1934 (R. 143, 144). Petitioner's motion for a new trial was overruled on May 28, 1934 (R. 149). The judgment of the Kansas City Court of Appeals and its first opinion affirming the judgment below was rendered June 14, 1937 (R. 174). Motion for rehearing was filed on June 24, 1937 (R. 192), and was sustained on July 7, 1937 (R. 195). The second opinion of the Kansas City Court of Appeals filed after rehearing, was rendered November 15, 1937 (R. 195, 196, 199). A subsequent motion for rehearing was filed November 24, 1937 (R. 196), and was overruled January 10, 1938 (R. 199), and an additional opinion filed (R. 217). Petition for writ of certiorari was filed in the Supreme Court of Missouri on January 31, 1938 (R. 221), and was denied February 25, 1938 (R. 228).

The petition prays that the writ of certiorari be directed

to the Kansas City Court of Appeals on the authority of *Western Union Telegraph Co.* v. *Priester,* 276 U. S. 252, 48 S. Ct. 234, 72 L. Ed. 555.

III.

STATEMENT OF THE CASE.

Under the heading "Summary Statement of the Matter Involved" in the petition, *ante,* pages 2 to 7, is a full statement of the case, and in the interest of brevity, the statement is not here repeated.

IV.

SPECIFICATION OF ERROR.

The Kansas City Court of Appeals erred in refusing to accord full faith and credit under Article IV, Section 1 of the Constitution of the United States to petitioner's charter and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in the case of *Trapp* v. *Soveriegn Camp of the Woodmen of the World,* 102 Neb. 562, 168 N. W. 191 (R. 101-139) announcing the legal significance of petitioner's charter as between petitioner and its members, and holding that the enactment of Section 82 of petitioner's by-laws, and the inclusion of the "payments to cease after 20 years" clause in its benefit certificates were each *ultra vires* of petitioner and void, and that in an action brought by a member to recover under the provisions of said by-law and the "payments to cease after 20 years" clause, petitioner was not estopped from asserting the invalidity of said by-law and said "payments to cease after 20 years" clause.

V.

SUMMARY OF ARGUMENT

(a) The judgment of the Supreme Court of Nebraska was a final, valid adjudication that under petitioner's charter the enactment of Section 82 of petitioner's by-laws and the inclusion of the "payments to cease after 20 years" clause in its benefit certificates were *ultra vires* of petitioner and *invalid* and that petitioner is not estopped to assert their invalidity in a suit brought to enforce the provisions of said by-law and said "payments to cease after 20 years" clause.

Trapp v. *Sovereign Camp of the Woodmen of the World,* 102 Neb. 562, 168 N. W. 191 (R. 101-139);

Haner v. *Grand Lodge, A. O. U. W.,* 102 Neb. 563, 168 N. W. 189.

(b) The aforesaid judgment of the Supreme Court of Nebraska having been rendered in a suit brought for the benefit of a class to which Pleasant Bolin, the deceased, belonged, and being a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is *res adjudicata* and binding upon respondents and should have been accorded full faith and credit under Article IV, Section 1 of the Constitution of the United States. If it is not considered binding upon respondents in a personal sense, it, nevertheless, announces the legal significance of petitioner's charter which, as thus interpreted, should have been accorded full faith and credit in the court below.

Supreme Council of Royal Arcanum v. *Green,* 237

U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089;
Modern Woodmen of America v. *Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783;
Hartford Life Ins. Co. v. *Ibs*, 237 U. S. 662, 35 S. Ct. 692, 59 L. Ed. 1165;
Hartford Life Ins. Co. v. *Barber*, 245 U. S. 146, 38 S. Ct. 54, 62 L. Ed. 208;
Sovereign Camp of the Woodmen of the World v. *Shelton*, 270 U. S. 628, 46 S. Ct. 207, 70 L. Ed. 769.

(c) The decision of the court below on the question of esoppel was, of itself, a denial of full faith and credit to petitioner's charter and the Nebraska judgment because (1) the decision was reached by application of the laws of the state of Missouri instead of the laws of the state of Nebraska, and (2) the issue of estoppel was finally adjudicated by the Nebraska judgment in favor of petitioner.

See cases cited under (b), supra.
Mills v. *Duryee*, 7 Cranch 481, 3 L. Ed. 411;
Hampton v. *McConnell*, 3 Wheat. 234, 4 L. Ed. 378;
Hancock Nat'l Bank v. *Farnum*, 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619;
Converse v. *Hamilton*, 224 U. S. 243, 32 S. Ct. 415, 56 L. Ed. 749;
Roche v. *McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365;
American Express Co. v. *Mullins*, 212 U. S. 311, 29 S. Ct. 381, 53 L. Ed. 525;
Fauntleroy v. *Lum*, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039;
United States v. *California & Oregon Land Co.*, 192 U. S. 355, 24 S. Ct. 266, 48 L. Ed. 476.

(d) Application of the Missouri insurance laws by the court below was, of itself, a denial of full faith and credit to petitioner's charter and to the Nebraska judgment because (1) under petitioner's charter as interpreted by the Supreme Court of Nebraska the issuance of the limited payment certificate was none the less *ultra vires* and invalid whether petitioner did, or did not, comply with the Missouri insurance laws, and (2) it clothed petitioner with powers, and subjected it to burdens in the state of Missouri which do not exist in the state under the laws of which petitioner was created, nor elsewhere.

Christmas v. *Russell*, 5 Wall. 290, 18 L. Ed. 475;
Roche v. *McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365;
Kenny v. *Supreme Lodge*, 252 U. S. 411, 40 S. Ct. 371, 64 L. Ed. 638, 10 A. L. R. 716;
Fauntleroy v. *Lum*, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039;
Modern Woodmen of America v. *Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783;
Hanover Fire Ins. Co. v. *Carr* 272 U. S. 494, 47 S. Ct. 179, 71 L. Ed. 372.

VI.

ARGUMENT

The Kansas City Court of Appeals erred in refusing to accord full faith and credit under Article IV, Section 1, of the Constitution of the United States to petitioner's charter and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in the case of *Trapp v. Sovereign Camp of the Woodmen of the*

World, 102 Neb. 562, 168 N. W. 191, (R. 101-139), announcing the legal significance of petitioner's charter as between the petitioner and its members, and holding that the enactment of Section 82 of petitioner's by-laws, and the inclusion of the "payments to cease after 20 years" clause in its benefit certificates were each *ultra vires* of petitioner and void, and that in an action brought by a member to recover under the provisions of said by-law and the "payments to cease after 20 years" clause, petitioner was not estopped from asserting the invalidity of said by-law and said "payments to cease after 20 years" clause.

(a) The Nebraska Judgment.

The entire record in the case of *Trapp v. Sovereign Camp of the Woodmen of the World,* 102 Neb. 562, 168 N. W. 191, authenticated under the Acts of Congress, was introduced in evidence in the instant case and appears in the record before this Court at pages 101 to 139.

In that case Prines L. Trapp, being the holder of a benefit certificate issued by petitioner containing the "payments to cease after 20 years" clause, instituted in the District Court of Douglas County, Nebraska a suit to compel petitioner to issue to him a paid-up certificate under the provisions of Section 82 of its by-laws. The petition alleged, in substance, that he became a member of the association in reliance upon the "payment to cease" feature of the benefit certificate and that he had paid all dues and assessments assessed by petitioner against him for more than twenty years. His action was intended to be a class suit, as is illustrated by the following quotation from his petition:

"Comes now the plaintiff, for and on behalf of

himself and all others similarly situated, and for cause of action * * *."

Petitioner filed an answer alleging that the "payments to cease after 20 years" clause contained in the benefit certificate was *ultra vires* and void.

The plaintiff filed a reply alleging, among other things, that petitioner was "* * * forever estopped from denying the validity of its contract * * *."

In the trial court judgment was rendered for petitioner from which an appeal was taken to the Supreme Court of Nebraska, where the judgment was affirmed.

The Supreme Court of Nebraska said: (l. c. 191 N. W. Rep.)

> "The main questions presented have been determined adversely to plaintiff in the case of *Haner* v. *Grand Lodge, A. O. U. W.*, No. 20280, decided June 15, 1918, and on the authority thereof the judgment of the district court is affirmed."

The case of *Haner* v. *Grand Lodge, A. O. U. W.*, referred to in the opinion in the *Trapp* case, is reported in 102 Neb. 563, 168 N. W. 189. In that case, the defendant, a fraternal beneficiary association created under the identical statutes of the State of Nebraska under which petitioner was created, enacted a by-law which provided:

> "Section 170. *Surrender Value*—Any member in good standing, seventy years or more of age, may make application for a final card as provided in these laws, and upon complying with the conditions necessary to the granting of the same, shall be entitled to be paid from the beneficiary fund, at the time of the

issuance of the same, a sum equal to all beneficiary assessments paid by him to the Grand Lodge of Nebraska, and a sum equal to all emergency fund payments made by him since the adoption of Article 29 of the Grand Lodge by-laws in 1905, together with four per cent. simple interest on each of said sums, said interest to be figured on the payments made each year from January 1st after the same were paid."

Plaintiff, having attained the age of 70 years, sought to compel the defendant association to make payment of the sum provided for in the above quoted by-law.

The Supreme Court of Nebraska held that under the statutes of the State of Nebraska, the enactment of the by-law was *ultra vires* of the association and void, and that the association was not estopped to assert the invalidity of the by-law. The Court said: (l. c. 190 N. W. Rep.)

"The ruling of the trial court is based upon the theory that section 170 of the by-laws was *ultra vires* and void under the statutes regulating the defendant association. The statutes cited read in part as follows:

"'A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries and not for profit. Each such beneficiary association shall have a lodge system, with ritualistic form of work, and a representative form of government.' Rev. St. 1913, Sec. 3295.

"'Such society shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age: Provided, the period in life at

which payment of physical disability benefits on account of age commences shall not be under seventy years.' Rev. St. 1913, Sec. 3296.

"Is section 170 of the by-laws *ultra vires* and *wholly* void? The statute gives power to bestow aid upon members who are sick or disabled, as a result of disease, accident or old age, but provides that benefits shall not accrue because of old age until the member has reached the age of 70 years. It does not give the right to confer such benefits upon a member merely because he reaches the age of 70 years; physical disability must be coupled with his years. The section of the by-laws forming the basis of this action fixes a definite surrender value without regard to the physical condition of the member. It is alleged that plaintiff is under permanent physical disability 'by reason of having reached the age of 70 years.' It is a matter of common knowledge that the attainment of this age does not necessarily work disability, and this statement in the petition adds nothing to the provisions of section 170 of the by-laws. Under the terms of this by-law disability is of no consequence; the time for settlement is fixed and definite without regard to the member's physical condition. The statute of Kansas governing this class of associations is essentially the same as ours. It has there been held that the statute does not authorize such payment. *Kirk* v. *Fraternal Aid Ass'n.* 95 Kan. 707, 149 Pac. 400. In support of this holding there are a number of citations which we do not here set out, but they may be found in the original report.

"It is argued that the association is estopped to deny the validity of this section of the by-laws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this by-law. He does not stand in the same relation to the association as does the holder of a policy

in a standard life insurance company, but occupies the dual position of insurer and insured. *The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection what it may not directly do.* 22 Cyc. 1417." (Italics ours)

(b) The Question of Full Faith and Credit.

In the course of its opinion in the instant case, the Kansas City Court of Appeals said: (R. 211)

> "The certificate being a Missouri contract, whether its act was ultra vires or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska."

Further in the opinion, the court said: (R. 214)

> "The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the 'full faith and credit' provision of the Federal Constitution is not involved."

Contrary to the decision of the Kansas City Court of Appeals in the instant case, this court has uniformly held that the relative rights and duties between a fraternal association and its members must be determined by the application of the laws of the state under which the association was created and to which it owes its existence and that the charter of the association and the decisions of the highest judicial tribunal of that state announcing the legal significance thereof, are entitled to be accorded full faith and credit under Article IV, Sec, 1 of the Constitution of the

United States notwithstanding the fact that the particular certificate in controversy was issued in a foreign state.

A case typical of those above referred to, and one which we believe to be controlling of the instant case, is that of *Supreme Council of the Royal Arcanum* v. *Green*, 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089.

In that case, a fraternal association created under the laws of the Commonwealth of Massachusetts enacted a by-law by which its membership dues were increased. Shortly after the increased rate went into effect, sixteen members of the association filed a bill in the Supreme Judicial Court of Massachusetts against the association in their own behalf and in behalf of all other certificate holders to vacate and set aside the by-law on the ground that the increase was *ultra vires* of the association and violative of their contract rights. The Massachusetts court decided that the increase complained of was valid, impaired no contract right and was entitled to be enforced. *Reynolds* v. *Supreme Council, Royal Arcanum*, 192 Mass. 150.

Subsequently, Samuel Green, a certificate holder, commenced in the courts of the State of New York a suit against the association in which the validity of the increase was assailed. It was decided in the Court of Appeals of the State of New York where the case was reviewed on appeal, *that since the certificate was a New York contract*, the courts of New York were not bound to give full faith and credit to the Massachusetts decision.

On a writ of error issued to the New York Court, this

court held that the New York Court was bound by the decision and judgment of the Massachusetts court. In the course of the opinion, it was said: (l. c. 541, 542)

> "It is not disputable that the corporation was exclusively of a fraternal and beneficiary character and that all of the rights of complainant concerning the assessment to be paid to provide for the Widows' and Orphans'. Benefit Fund had their source in the constitution and by-laws and therefore their validity could be alone ascertained by a consideration of the constitution and by-laws. This being true, it necessarily follows that resort to the constitution and by-laws was essential unless it can be said that the rights in controversy were to be fixed by disregarding the source from which they arose and by putting out of view the only considerations by which their scope could be ascertained. Moreover as the charter was a Massachusetts charter and the constitution and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that state, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws. *Indeed, the accuracy of this conclusion is irresistably manifested by considering the intrinsic relation between each and all the members concerning their duty to pay assessments and the resulting indivisible unity between them in the fund from which their rights were to be enjoyed. The contradiction in terms is apparent which would rise from holding on the one hand that there was a collective and unified standard of duty and obligation on the part of the members themselves and the corporation, and saying on the other hand that the duty of members was to be tested isolatedly and individually by resorting not to one source of authority applicable to all but by applying many divergent, variable and conflicting criteria*

* * * *And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an assessment which was one thing in one state and another in another, and a fund which was distributed by one rule in one State and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum to be distributed* It was doubtless not only a recognition of the inherent unsoundness of the proposition here relied upon, but the manifest impossibility of its enforcement which has led courts of last resort of so many States in passing on questions involving the general authority of fraternal associations and their duties as to subjects of a general character concerning all their members to recognize the charter of the corporation and the laws of the State under which it was granted as the test and measure to be applied." (Italics ours.)

On the question of the effect to be given to the decision in the Massachusetts case, Green not being a party thereto, it was said: (l. c. 544, 545.)

"The controlling effect of the law of Massachusetts being thus established and the error committed by the court below in declining to give effect to that law and in thereby disregarding the demands of the full faith and credit clause being determined, we come to consider whether the increase of assessment which was complained of was within the powers granted by the Massachusetts charter or conflicted with the laws of that State. Before doing so, however, we observe that the settled principles which we have applied in determining whether the controversy was governed by the Massachusetts law clearly make manifest how inseparably what constitutes the giving of full faith and credit to the Massachusetts judgment is involved in the consideration of the application of the laws of that State and

therefore, as we have previously stated, how necessarily the express assertion of the existence of a right under the Constitution of the United States to full faith and credit as to the judgment was the exact equivalent of the assertion of a claim of right under the Constitution of the United States to the application of the laws of the State of Massachusetts. We say this because if the laws of Massachusetts were not applicable, the full faith and credit due to the judgment would require only its enforcement to the extent that it constituted the thing adjudged as between the parties to the record in the ordinary sense, and on the other hand, *if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such cases being substantially the same as the duty to enforce the judgment.*" (Italics ours.)

The court further said: (l. c. 546.)

"Coming then to give full faith and credit to the Massachusetts charter of the corporation and to the laws of that State to determine the powers of the corporation and the rights and duties of its members, there is no room for doubt that the amendment to the by-laws was valid if we accept, as we do, the significance of the charter and of the Massachusetts law applicable to it as announced by the Supreme Judicial Court of Massachusetts in the *Reynolds Case*. And this conclusion does not require us to consider whether the judgment *per se* as between the parties, was not conclusive in view of the fact that the corporation for the purposes of the controversy as to assessments was the representative of the members."

In the case of *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, the beneficiary under a certificate issued by an Illinois fraternal society sought recovery thereunder in the Nebraska courts on the ground that the member to whom the certificate was issued had disappeared and had not been heard from for more than ten years. The society had enacted a by-law which provided, in substance, that long continued absence of a member, unheard of, did not give a right to recover on a benefit certificate until after the life expectancy of the member had expired. This by-law had been held valid and binding upon the member by the Supreme Court of Illinois in a case to which neither the absent member nor the beneficiary were a party.

The certificate under which recovery was sought was issued in South Dakota prior to the adoption of the aforesaid by-law.

It was held that the Nebraska Court was bound to give full faith and credit to the judgment of the Illinois court. Mr. Justice Holmes said: (l. c. 551.)

> "The indivisible unity between the members of a corporation of this kind in respect of the fund from which their rights are to be enforced and the consequence that their rights must be determined by a single law, is elaborated in *Supreme Council of the Royal Arcanum* v. *Green*, 237 U. S. 531, 542, 35 S. Ct. 724, 59 L. Ed. 1089, L. R. A. 1916A, 771. *The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile membership looks to and must be governed by the law of the State granting the incorporation. We need not consider what other States may refuse to do, but we deem it established that they*

cannot attach to membership rights against the Company that are refused by the law of the domicil." (Italics ours.)

Other cases which demonstrate that full faith and credit should have been accorded to petitioner's charter and to the aforesaid decision and judgment of the Supreme Court of Nebraska are *Hartford Life Ins. Co.* v. *Ibs*, 237 U. S. 662, 35 Sup. Ct. 692, 59 L. Ed. 1165, *Hartford Life Ins. Co.* v. *Barber*, 245 U. S. 146, 38 Sup. Ct. 54, 62 L. Ed. 208, and *Sovereign Camp of the Woodmen of the World* v. *Shelton*, 270 U. S. 628, 46 S. Ct. 207, 75 L. Ed. 769.

We think it is clear that the *Trapp* case, *supra*, was a class suit and that it involved a controversy as to which petitioner was entitled to stand in judgment for all of its members holding limited payment certificates and that, accordingly, the judgment rendered in favor of petitioner is, for either or both reasons, binding upon, and *res judicata* as to respondents. But regardless of whether or not it is considered binding upon respondents in a personal sense for either of such reasons, it, nevertheless, announces the legal significance of petitioner's charter which, under the decisions of this court above referred to, is entitled to be accorded full faith and credit, as thus interpreted, in the courts of every state in the nation. If, therefore, respondents could not recover in the courts of the State of Nebraska, and we think it is clear that they could not, then it follows, we think, that neither could they recover in the courts of the State of Missouri without violating the full faith and credit provisions of the Constitution. To hold otherwise would fasten upon membership in petitioner in one state rights different from those existing in other states, a result which was condemned by this court in the foregoing cases.

(c) The Question of Estoppel.

In the instant case, the Kansas City Court of Appeals decided that even if it was *ultra vires* of petitioner to enact Section 82 of its by-laws and to include in its benefit certificates the "payments to cease after 20 years" clause, petitioner was, nevertheless, estopped under the laws of the State of Missouri, which were held to be applicable, to assert the invalidity of the by-law and the "payments to cease after 20 years" clause. The Court did not decide that petitioner was estopped under the Nebraska law. In the course of its opinion, the Court said: (R. 208.)

> "Whether such act was *ultra vires* its powers acting in either capacity is a question to be determined by the laws of Missouri. * * * Likewise, the question of estoppel."

In the additional opinion filed upon overruling petitioner's last motion for rehearing, the Court indicated that under certain facts its decision might have been different, and then stated: (R. 219.)

> "If such a case be presented to this court, we assert the right of this court to decide all matters of *ultra vires* and estoppel by the laws of Missouri."

Since the Court's decision on the question of estoppel is based upon the laws of Missouri, and not upon the laws of Nebraska, the decision in this respect alone is a denial of full faith and credit to petitioner's charter and to the judgment in the *Trapp* case wherein the legal significance of petitioner's charter is announced. *Supreme Council of Royal Arcanum* v. *Green, supra; Modern Woodmen of America*

v. *Mixer, supra; Hartford Life Ins. Co.* v. *Ibs, supra; Hartford Life Ins. Co.* v. *Barber, supra.*

Moreover, the question of estoppel was put directly in issue in the *Trapp* case, *supra,* and was decided in favor of petitioner. It is, of course, settled by repeated decisions of this Court that the *Trapp* judgment is entitled to be given in the courts of Missouri the same credit, validity and effect that would be given to it in the courts of Nebraska, and that only such defenses as could be made to it in the courts of Nebraska may be made in the courts of Missouri. (*Mills* v. *Duryee,* 7 Cranch 481, 3 L. Ed. 411; *Hampton* v. *McConnell,* 3 Wheat. 234, 4 L. Ed. 378; *Hancock Nat'l Bank* v. *Farnum,* 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619; *Converse* v. *Hamilton,* 224 U. S. 243, 32 S. Ct. 415, 56 L. Ed. 749; *Roche* v. *McDonald,* 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365) and that it is conclusive as to all the *media concludendi. American Express Co.* v. *Mullins,* 212 U. S. 311, 29 S. Ct. 381, 53 L. Ed. 525; *Fauntleroy* v. *Lum,* 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039; *United States* v. *California & Oregon Land Co.,* 192 U. S. 355, 24 S. Ct. 266, 48 L. Ed. 476.

It is clear we think, that the decision of the Kansas City Court of Appeals on the question of estoppel cannot be considered an independent, non-federal ground of sufficient breadth to sustain the judgment As heretofore pointed out, the mere application of estoppel in the instant case adversely to petitioner, whether under the laws of the State of Missouri or under the laws of the State of Nebraska, denies to petitioner's charter and to the *Trapp* judgment the credit, validity and effect to which they are entitled under the full faith and credit provisions of the

Constitution. We need not cite authority for the proposition that a judgment of a state court is not based upon an independent non-federal ground of sufficient breadth to sustain it if it is, itself, violative of some provision of the Constitution.

(d) The Missouri Insurance Laws.

The opinion of the Kansas City Court of Appeals raises the question of whether or not the failure of petitioner to plead and prove that it had complied with the statutes of the State of Missouri entitling it to do business in the State of Missouri as a fraternal association, can clothe the petitioner with powers which it otherwise could not exercise, and in effect deny to its charter and to the *Trapp* judgment the full faith and credit to which they would otherwise be entitled.

In dealing with this question, it is again noted that the laws of the State of Missouri are applied, and not the laws of the State of Nebraska. This is, of itself, a denial of full faith and credit, unless violation of the Missouri insurance laws excuses the courts of Missouri from giving effect to the full faith and credit provisions of the Constitution.

As early as the year 1866 this court decided in the case of *Christmas* v. *Russell*, 5 Wall 290, 18 L. Ed. 475, that a statute enacted in one state cannot operate to impair the credit validity and effect which otherwise would be given to a judgment rendered in a sister state. The rule thus announced has been steadfastly adhered to in the cases of *Roche* v. *McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365; *Kenny* v. *Supreme Lodge*, 252 U. S. 411, 40 S. Ct. 371,

64 L. Ed. 638, 10 A. L. R. 716; *Fauntleroy* v. *Lum*, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039.

It is not disputed but that a state may impose conditions upon foreign corporations doing business within its territorial limits, but, as stated by this court in *Modern Woodmen of America* v. *Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, "* * * They cannot attach to membership right against the company that are refused by the law of the domicile." Nor may a state exact of a foreign corporation a sacrifice of its constitutional rights as a condition to its engaging or continuing in business within the state. *Hanover Fire Ins. Co.* v. *Carr*, 272 U. S. 494, 47 S. Ct. 179, 71 L. Ed. 372. The decision of the Kansas City Court of Appeals in the instant case is in the very teeth of the decisions of this court in the two cases last cited.

Neither may the application which has been given to the Missouri insurance laws be considered an independent non-federal ground for the court's decision of sufficient breadth to sustain it. If full faith and credit is accorded to petitioner's charter and the *Trapp* judgment, petitioner was without power to enact Section 82 of its by-laws and to include in its benefit certificates the "payments to cease after 20 years" clause, regardless of whether or not petitioner is a fraternal association or an "old line" company, and regardless of whether or not the certificate in question was fraternal certificate or an "old line" contract of insurance. But if full faith and credit is denied to petitioner's charter and to the *Trapp* judgment and some other law applied as was done in the instant case in the court below petitioner's corporate powers are thereby broadened and it becomes within its power to do that which it could not do under the laws of the state of its creation.

As previously stated, this result, and the method employed to reach it, was condemned in *Modern Woodmen of America* v. *Mixer, supra,* and clearly gives rise to a federal question over which this court may exercise jurisdiction.

(f) Conclusion.

In conclusion, it is submitted that the Kansas City Court of Appeals erred in refusing to accord full faith and credit to petitioner's charter and to the judgment in the *Trapp* case, wherein the legal significance of petitioner's charter is announced. To hold otherwise clothes petitioner with powers in the State of Missouri which it may not exercise elsewhere, and necessarily results in an advantage to certificate holders who are residents of the State of Missouri over certificate holders who are residents of other states. Moreover, it imposes upon petitioner a burden with respect to certificates which it has issued in the State of Missouri not embraced within its charter, which necessarily results in an impairment of the rights of the holders of its certificates who are residents of other states.

It is further submitted that the error of the Kansas City Court of Appeals in refusing to accord full faith and credit to petitioner's charter and to the *Trapp* judgment fully justifies the issuance of this court's writ of certiorari.

Respectfully submitted,

RAINEY T. WELLS
Of Omaha, Nebraska
M. E. FORD
Of Maryville, Missouri
JOHN T. HARDING
DAVID A. MURPHY
R. CARTER TUCKER,
JOHN MURPHY,
CHARLES B. TURNEY,
Of Kansas City, Missouri
Attorneys for Petitioner